

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

AmbuServe Ambulance

Employer,

and

Case No. 21-RC-081393

National Emergency Medical Services
Association/NAGE Local 2

Petitioner.

_____ /

**NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION/NAGE LOCAL 2's
OPPOSITION TO THE EMPLOYER'S EXCEPTIONS TO THE REGIONAL
DIRECTOR'S REPORT ON OBJECTIONS**

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INTRODUCTION

Petitioner National Emergency Medical Services Association/NAGE Local 2 (“NEMSA” or “Union”) timely submits this statement in opposition to the Exceptions to the Regional Director’s Report on Objections (“Exceptions”) filed by the Employer AmbuServe Ambulance (“AmbuServe” or “Employer”). The Regional Director’s Report on Objections (“RDRO”) contains a thorough and well-reasoned analysis of AmbuServe’s objections and the evidence presented in support of those objections. Indeed, the RDRO is free of error and does not raise any compelling reasons for the National Labor Relations Board (“NLRB” or “Board”) to review the RDRO or find merit to any of the Exceptions based on applicable NLRB Rules and Regulations. 29 CFR §§ 102.69(d)(3), 102.67(c). Consequently, the Board should overrule AmbuServe’s Exceptions, deny its request for review and direct the Regional Director to certify NEMSA as the duly elected representative for the bargaining unit at issue.

DISCUSSION

I.

NO GROUNDS EXIST FOR THE BOARD TO REVIEW OR OTHERWISE OVERRULE ANY PORTION OF THE RDRO

AmbuServe’s Exceptions are treated as a request for review by the Board as set forth in Section 102.67(c) of the NLRB Rules and Regulations. 29 CFR § 102.69(d)(3). The Board will not grant review unless: (1) a substantial question of law or policy is raised based on the absence of or a departure from officially reported Board precedent; (2) the RDRO is clearly erroneous on a substantial factual issue based on the record and such error prejudicially affects the rights of a party; (3) the conduct of the hearing or any ruling made in

connection with the proceeding has resulted in prejudicial error; or (4) there are compelling reasons for reconsideration of an important Board rule or policy. 29 CFR § 102.67(c). In this case, AmbuServe's Exceptions do not identify grounds upon which the Board should review the RDRO. AmbuServe does not contend that substantial questions of law or policy exist in this case for which there is no reported Board precedent. AmbuServe also does not claim that the RDRO misapplied or departed from existing Board precedent with respect to the objections at issue in this case. Instead, AmbuServe merely disagrees with the Regional Director's determination that the Employer's supporting evidence is insufficient to constitute objectionable conduct. While AmbuServe may prefer that all Union campaign activities be regarded as objectionable and sufficient to set aside an election, AmbuServe has not provided any compelling reasons for the Board to reconsider or deviate from existing Board precedent which establishes otherwise.

A. The RDRO Properly Determined that AmbuServe Failed to Produce Sufficient Evidence to Satisfy Its Burden of Proof

The Regional Director properly determined that an evidentiary hearing was unnecessary due to the absence of substantial and material issues of fact.¹ *Care Enterprises*, 306 NLRB 491 (1992); *Speakman Electric Co.*, 307 NLRB 1441 (1992). Indeed, the Regional Director correctly determined that AmbuServe's supporting "evidence" would not constitute grounds for overturning the election even if such evidence were introduced at a hearing. The reasons for the Regional Director's determination are fully articulated in the

¹ NEMSA's answer and response to AmbuServe's post-election objections is attached as Exhibit A.

RDRO and are entirely free of error. AmbuServe cannot establish grounds for setting aside an election merely by demonstrating that certain conduct occurred, AmbuServe must also demonstrate that the conduct interfered with the free choice of employees to such a degree that it has materially affected the results of the election. The RDRO contains the Regional Director's investigative findings and reasons for concluding that AmbuServe failed to produce sufficient evidence to satisfy its burden of proof with respect to any of the Employer's objections. NEMSA perceives no reason to repeat or significantly expand upon the Regional Director's rationale as set forth in the RDRO.

B. The RDRO Properly Overruled Objection Nos. 1, 2, 3, 5, 6, 7, 8, 9, 10 and 12

Most of AmbuServe's rambling, inconsistent and sometimes illogical objections and Exceptions appear grounded on the misguided premise that unions should be precluded from distributing campaign materials because "no employees would be able to determine" which campaign statements are true and which are false. (Emp. Exceptions, p. 4) According to the Employer, "employees could not distinguish between propaganda and what is an actual benefit to employees because they are "not labor attorneys" and "do not understand federal labor law as what can be legal or not legal during an election campaign." Emp. Exceptions, pp. 4-5) AmbuServe's erroneous and demeaning assertions about the workforces' knowledge and intellectual abilities depart significantly from the Board's understanding and experience with respect to the sophistication of employees during representation campaigns:

Employees are generally able to understand that a union cannot obtain benefits automatically by winning an election but must seek to achieve them through collective bargaining. Union promises . . . are easily recognized by employees to be dependent on contingencies beyond the union's control and do not carry

with them the same degree of finality as if uttered by an employer who has it within his power to implement promises of benefits. E.g., *Smith Company*, 192 NLRB 1098, 1101 (1971).

The RDRO appropriately overruled all of AmbuServe's objections alleging that NEMSA promised benefits to employees as an inducement for votes during the election. Merely because AmbuServe believes that NEMSA's campaign literature could be interpreted differently, the Regional Director properly found, based on the express wording of the documents and the statements of Union representatives, that NEMSA's campaign literature and statements did not contain promises and/or guarantees of particular wages, health and welfare benefits, working conditions or outcomes if the employees voted for the Union.

AmbuServe's Exceptions also inexplicably direct attention to what the Employer regarded as misrepresentations by NEMSA despite acknowledging that the Board does not probe into the truth or falsity of the parties' campaign statements. *Midland National Life Insurance Co.*, 263 NLRB 127, 133 (1982). Specifically, AmbuServe contends that the Regional Director should have found NEMSA's statements concerning the benefits of unionization to be objectionable misrepresentations. The RDRO properly overruled all such objections and AmbuServe has not articulated a compelling reason for the Board to overturn that determination.

AmbuServe also asserts that NEMSA provided employees with incorrect information about a rumored sale and closure of the company. AmbuServe characterizes NEMSA's actions as both misrepresentations and threatening employees with the loss of their jobs if they did not vote for the Union. According to AmbuServe, NEMSA told employees that AmbuServe would sell the company and terminate their employment unless they voted for

the Union. The RDRO correctly overruled these objections to the extent AmbuServe claimed that NEMSA misrepresented the facts surrounding the potential sale and closure of the company. (RDRO, p. 14) With respect to the alleged threat, the RDRO properly found that NEMSA's statements were not threats and would not reasonably tend to interfere with the employee's free choice in the election. (RDRO, p. 14) As noted in the RDRO, NEMSA has no control over whether or not AmbuServe is sold, what happens to the wages, benefits and working conditions of non-union employees or if a successor employer would rehire any employees. (RDRO, p. 14) The RDRO properly overruled this objection and AmbuServe's Exceptions to that action are without merit.

C. The RDRO Properly Overruled Objection No. 4

AmbuServe's exception to the RDRO with respect to this objection is premised on yet another misunderstanding of Board precedent. There is no dispute that NEMSA unambiguously advised employees in campaign documents that initiation fees were waived for all employees until after the workforce ratified the first collective bargaining agreement, at which point initiation fees would be charged to new employees hired after that time. (Emp. Exceptions, Ex. 14; NEMSA Ex. A) As noted in the RDRO, the waiver of initiation fees was not conditioned on employees signing authorization cards, joining NEMSA or providing any other outward support for the Union. While AmbuServe apparently regards NEMSA's actions as "a promise of benefits that interfered with the free atmosphere of the election," existing precedent holds otherwise. *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973). AmbuServe does not contend that the RDRO applied the wrong legal standard. Instead, AmbuServe merely disagrees with the existing precedent and believes such action by the

Union should be regarded as an objectionable promise of benefits warrants setting aside an election. No compelling reasons exist, however, for the Board to reconsideration the existing rule or policy on this issue and the Employer's exception to the RDRO should be overruled.

D. The RDRO Properly Overruled Objection No. 11

AmbuServe's assertion that employee attendance at a meeting with a union representative held at a Starbucks away from the employer's premises for employees to attend during their off duty time was not voluntary defies rational explanation. (Emp. Exceptions, pp. 13-14) According to AmbuServe, "employees were forced to go to the meeting to learn about the possibility of the Company being sold" because "the Union put out rumors of closure and sale that could jeopardize the job security of the employees." (Emp. Exceptions, p. 14) However, there is no evidence that employees were in any way forced physically or psychologically to attend the meeting. Moreover, the fact that only one employee actually attended the meeting held the night before the election belies the Employer's assertion that assembled groups of employees were forced to attend a union meeting within 24 hours before the election. Because AmbuServe's exception is premised on twisted logic, rather than the evidence and existing Board precedent, the RDRO correctly overruled this objection. E.g., *Foxwoods Resort Casino*, 352 NLRB 771, 780-781 (2008).

E. The RDRO Properly Overruled Objection No. 13

AmbuServe's Exceptions erroneously refer to Objection 13 as Objection 14. (Emp. Exceptions, p. 6; Ex. 7) Objection 13 involved an allegation that NEMSA offered coffee and food to anyone who attended union meetings at Starbucks. AmbuServe contends that numerous unidentified employees told the Employer that NEMSA offered them coffee and

food in order to induce a yes vote for the union. (Emp. Exceptions, p. 6) The RDRO properly overruled this objection based on the evidence and existing Board precedent. E.g., *Chicagoland Television News, Inc.*, 328 NLRB 367 (1999). Nowhere in AmbuServe's Exceptions does the Employer explain how or why legitimate grounds exist for the Board to review or otherwise overrule the RDRO.

CONCLUSION

AmbuServe's Exceptions to the RDRO are without merit. The Board should overrule AmbuServe's Exceptions, deny its request for review and direct the Regional Director to certify NEMSA as the duly elected representative for the bargaining unit at issue.

Dated: August 27, 2012

Respectfully submitted:

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

AmbuServe Ambulance.,

Case No. 21-RC-081393

Employer,

and

National Emergency Medical Services
Association/NAGE Local 2,

Petitioner.

PROOF OF SERVICE

I, Heidi Primack Talbot, declare:

I am over the age of 18 years and not a party to this action. I am an employee of the Talbot Law Group, A Professional Corporation, 105 E Street, Suite 2E, Davis, CA 95616.

I certify that on August 27, 2012, I served the National Emergency Medical Services Association/NAGE Local 2's Opposition to the Employer's Exceptions to the Regional Director's Report on Objections, NLRB Case No. 21-RC-081393, by placing such documents in a sealed Federal Express envelope and addressed to the following persons:

H. Sanford Rudnick, J.D. for Employer
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Walnut Creek, CA 94596

Olivia Garcia
Regional Director, Region 21
National Labor Relations Board
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed by me on:

Dated: August 27, 2012

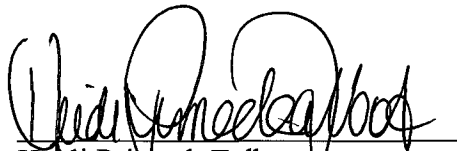

Heidi Primack Talbot

EXHIBIT “A”

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 21**

AmbuServe Ambulance

Employer,

and

Case No. 21-RC-081393

National Emergency Medical Services
Association/NAGE Local 2

Petitioner.

_____ /

**NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION/NAGE LOCAL 2's
ANSWER AND RESPONSE TO AMBUSERVE'S ELECTION OBJECTIONS**

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INTRODUCTION

Petitioner National Emergency Medical Services Association/NAGE Local 2 (“NEMSA” or “Union”) submits the following answer and response to the election objections filed by the Employer AmbuServe Ambulance (“AmbuServe” or “Employer”). The Regional Director should administratively overrule the Employer’s objections without the necessity for hearing. There are no substantial and material issues of fact and the objections are legally insufficient to have adversely affected the employees’ free choice during the vote.

DISCUSSION

RESPONSE TO OBJECTION NUMBERS 1, 5, 6 and 9

These four objections all concern promises and/or misrepresentations allegedly made by NEMSA and/or its agents regarding improvements in wages, benefits and working conditions that can be attained through the collective bargaining process. NEMSA denies promising any particular wages, benefits and working conditions to employees if NEMSA became the bargaining representative. NEMSA also denies making any misrepresentations to employees concerning the collective bargaining process.

With respect to union promises of benefit, the National Labor Relations Board (“NLRB” or “Board”) has held that:

“[e]mployees are generally able to understand that a union cannot obtain benefits automatically by winning an election but must seek to achieve them through collective bargaining. Union promises . . . are easily recognized by employees to be dependent on contingencies beyond the union’s control and do not carry with them the same degree of finality as if uttered by an employer who has it within his power to implement promises of benefits. E.g., *Smith Company*, 192 NLRB 1098, 1101 (1971).

With respect to alleged misrepresentations, the Board does not “probe into the truth or falsity of the parties’ campaign statements.” E.g., *Midland National Life Insurance Co.*, 263 NLRB 127, 130 (1982). Consequently, the Employer’s objections are both factually and legally insufficient to be sustained or justify setting aside the election.

Objection Number 1 erroneously asserts that NEMSA and/or its agents promised employees a \$5.00 increase in wages and benefits if they voted for the Union. Objection Number 5 falsely states that NEMSA and/or its agents misrepresented the type of wages and benefits they would receive under union conditions. Objection Number 6 wrongly alleges that the Union told employees it would improve their wages, benefits and working conditions

and get them same contract the Union has with other ambulance companies. Objection 9 incorrectly alleges in part that the Union told employees that AmbuServe would automatically agree to the Union's demands. NEMSA denies that it or any agents acting on NEMSA's behalf made any of these promises or assertions to employees as an inducement from them to vote for the Union. To the contrary, NEMSA and its representatives informed employees that wages and benefits are subject to collective bargaining and that the Union could not promise them any wage or benefit increases or better working conditions.

During the course of the election campaign, the Union distributed information to employees extolling NEMSA's successes in other bargaining units and the advantages to union representation in the work place. Neither NEMSA nor its representatives made any promises of particular benefits, but stated that the Union would fight for them and obtain the best contract possible through the collective bargaining process. NEMSA representatives such as Shelly Hudelson encouraged employees to review other NEMSA contracts and discover what might be possible to attain at the bargaining table. Many of the AmbuServe employees were unfamiliar with the wages, benefits and working conditions typically provided to unionized ambulance transportation employees. While identifying a variety of potential benefits that might be achievable through the collective bargaining process, NEMSA representative never told employees they would receive the same wages, benefits and working conditions, or the same contracts, attained by NEMSA in other bargaining units. NEMSA representatives also never told employees that AmbuServe would automatically agree to the Union's demands. To the contrary, NEMSA representatives explained to employees that everything was subject to the collective bargaining process.

A campaign document disseminated by NEMSA stated that the "Average Difference Between AmbuServe employees and NEMSA represented employees" is \$5.00 per hour and that AmbuServe employees are five time more likely to get higher wages, better benefits, and improved working conditions with NEMSA than if they were to remain non-union. (Attachment "A") The document also stated that NEMSA's contracts protect the higher industry standard wages that NEMSA won for other represented employees. In addition, NEMSA presented employees with statistical information obtained from various public sources comparing the wages and benefits received by union workers across the country compared to non-union workers. The sources for that information were disclosed on the documents. (Attachment "B") None of NEMSA's campaign documents promised a \$5.00 increase in wages and benefits to employees if they voted for the Union. Instead, the documents merely identified benefits of Union membership and the gains NEMSA has achieved for its members through the collective bargaining process.

The remaining allegations in Objection Number 9 are that NEMSA promised to start negotiations immediately after the election and that the Employer could not file post-election

objections if employees voted for the Union. NEMSA did tell employees that NEMSA “will hit the ground running” and immediately begin preparing for contract negotiations after the election. (Attachment “C”, p.3) There is absolutely nothing objectionable about such a statement. The election process is not complete until the Board certifies the election results. Hudelson advised employees that there is a seven day period following the vote during which the parties can file objections to the conduct of the election. Hudelson informed employees that if objections were filed the Board would investigate the objections and it could several weeks to resolve. Hudelson also stated that if no objections were filed the election results would be certified and if NEMSA won the election, NEMSA would begin the process for selecting shop stewards, training shop stewards, surveying the work force for purposes of contract negotiations and scheduling dates for contract negotiations. NEMSA and/or its representatives never told employees that a demand to bargain would be made the day after the vote without regard for the Board’s election procedures and the rights of the parties. NEMSA’s use of the term “immediately” meant nothing more than as soon as the parties are legally entitled and/or obligated to commence contract negotiations.

There is no merit to any of these objections.

RESPONSE TO OBJECTION NUMBER 2

This objection erroneously asserts that NEMSA and/or its agents made additional promises to employees if they voted for the Union. This objection contends that NEMSA promised employees that the Union could prevent AmbuServe from making changes to their work hours and shift configurations. NEMSA is unaware of any facts supporting this objection and denies that the Union or its agents made such promises. In fact, Hudelson advised bargaining unit employees that management generally retains considerable flexibility with respect to shift configurations and work hours in the ambulance transportation industry. Hudelson informed employees that shift configurations and work hours are negotiable and would be addressed through the collective bargaining process, but employees should anticipate that management will retain some ability to make changes to their work hours and shift configurations.

With respect to the subject of work hours and shift configurations, NEMSA is aware that AmbuServe unilaterally eliminated 24 hour shifts before the representation petition was filed and subsequently reintroduced 24 hours shifts to the workforce after the representation petition was filed in this case. The Employer also began affording meal breaks to employees after the representation petition was filed in this case. While these actions undoubtedly involved unlawful unilateral action by AmbuServe during a time when the Employer was required to maintain the status quo, such actions would seemingly diminish any positive

impact to the Union if it had promised to prevent the Employer from making changes to work hours and shift configurations.

This objection essentially alleges that NEMSA promised a benefit to employees or misrepresented the Union's ability to control changes to work hours and shift configurations. As previously stated, such objections are factually and legally insufficient to affect the election.

RESPONSE TO OBJECTION NUMBERS 3, 7, 8 and 12

These objections all concern the sale or attempted sale of AmbuServe during the pendency of the representation election.

Objection Numbers 3 and 7 contain the same false assertion that NEMSA told employees the Employer would sell the business and terminate employees if they did not vote for the Union. At no time did NEMSA and/or its agents make such assertions or statements to employees. Instead, Hudelson explained what could happen in a successor employer situation with a unionized workforce compared to a workforce that is not represented by a union. Hudelson informed bargaining unit employees that if they are non-union and remain "at-will" employees following a successor employer's assumption of the business, they remain "at-will" and could be terminated without cause. In contrast, Hudelson stated that successor employer situations involving unionized employees covered by a collective bargaining agreement are often different. The unionized employees typically retain the working conditions established by the collective bargaining agreement after transitioning to the new employer until the parties bargain for a new contract. Neither Hudelson nor any other NEMSA agent ever claimed that AmbuServe would sell the business and terminate employees if they did not vote for the Union and there is no evidentiary support for this objection. NEMSA could not force the sale of the company or insist on the termination of employees if they did not vote for the Union.

Objection Numbers 8 and 12 do not articulate objectionable conduct by the Union or identify any misrepresentations to employees. Instead, these objections assert that NEMSA allegedly threatened employees with the sale of AmbuServe and the loss of their jobs if they did not vote for the Union. NEMSA denies these allegations. Moreover, NEMSA could not force the sale of the company or threaten the jobs of employees. NEMSA had no control over such matters.

With respect to the sale of AmbuServe, the company's owner told some employees that she hired the CEO to make the company more profitable so that she could sell the company. Employees communicated this information to Hudelson during the election campaign. The owner of AmbuServe told employees during the election campaign to give

her a chance to make things better and reject the Union. Hudelson believed this statement was inconsistent with statements made to other employees about selling the company. Hudelson conducted an internet search for the sale of ambulance companies in the Los Angeles and Orange County areas. She located the following website link: www.bizben.com/business-for-sale/ambulance-emt-business-for-sale-type-california-ca.php. A broker named Leo Keligian was identified on the website along with a contact telephone number. NEMSA representative Dary Sardad, in the presence of Hudelson, called Keligian and asked if the company referenced on the website was still for sale and further asked for the name of the company. At no time did Sardad identify himself as a potential buyer or investor in the ambulance company. Nor did Keligian ask for any identifying information from Sardad.

Keligian was eager to talk about the matter and advised Sardad that the company had been sold and was in escrow. According to Keligian, the sale was nearly complete and that the parties were merely waiting for a profit and loss statement from the company. Keligian also told Sardad that the name of the company was AmbuServe. Sardad and Hudelson then passed this information along to a few employees who were involved in the union organizing campaign and asked them what they wanted to do with the information. The employees were concerned that the owner of AmbuServe had not disclosed to employees that she was in the process of selling the company.

One employee who was leading the union organizing campaign asked Hudelson for the website information. The employee accessed the website himself, obtained the contact information for Keligian and independently called him. Keligian again verified to the employee that AmbuServe had been sold and was in escrow. Keligian also provided information concerning the sale price and other details of the sale to the employee. Keligian provided this information without ever asking the employee to identify himself. The employee subsequently provided a summary of his conversation with Keligian to the AmbuServe owner in an email dated June 22, 2012. (Attachment "D")

NEMSA representatives only spoke to the three employees involved with the union organizing campaign about the website and the information regarding the sale of the company. One of those employees posted the website information on a union Face Book site. NEMSA believes that the posting of the information prompted several other employees to call Keligian and independently confirm the sale of the company. The employees themselves spread the information about the sale of the company.

The Employer's Objection Numbers 8 and 12 admit that a broker "was hired to sell the company" and that this information was somehow confidential. In essence, AmbuServe seeks to blame NEMSA for the broker's willingness to disclose the fact that AmbuServe was

being sold. NEMSA did not use false pretenses to obtain this important information about AmbuServe, which the company was withholding from its employees. In fact, AmbuServe's owner was providing contrary information to employees and advising them that the company was not for sale. NEMSA and the company's employees had the right to respond to those false assertions with information demonstrating that AmbuServe was knowingly disingenuous. NEMSA did nothing improper and did not interfere in any way with employees' free choice to vote during the election. There is no merit to any of these objections.

RESPONSE TO OBJECTION NUMBER 4

The Employer alleges that NEMSA and/or its agents induced employees to sign union authorization cards before the election in exchange for waiving the payment of initiation fees and reduced dues. A union's offer to waive initiation fees is not objectionable when the offer is unconditional, unambiguous and applies to all employees. *NLRB v. Savair Manufacturing Co.*, 414 U.S. 270 (1973). Instead, an offer to waive initiation fees is objectionable only when the waiver is limited to those employees who support the union. *Id.*

NEMSA denies that it conditioned the waiver of initiation fees to employees who signed union authorization cards before the election or to employees who actively supported the Union. To the contrary, NEMSA unambiguously advised employees in campaign documents that initiation fees are waived for all current employees and that no employee would be charged an initiation fee until after the workforce ratified the first collective bargaining agreement. The waiver of initiation fees is unconditional and applies to all employees both before and after the election. (Attachment "E")

With respect to the accusation that NEMSA would reduce dues for employees who sign union authorization cards, there is no factual support for the Employer's assertion. While the collection of dues is often difficult in the absence of union security and dues deduction provisions in a collective bargaining agreement, dues are uniformly applied to bargaining unit employees based on a standardized calculation. No employee was offered a reduced dues structure in exchange for signing a union authorization card or otherwise supporting the Union. The Employer's accusations in Objection 4 are patently false and did not affect the election.

RESPONSE TO OBJECTION NUMBER 10

This objection is vague and ambiguous and lacking any factual context. For the most part, this objection appears substantially similar to Objection Numbers 3, 7, 8 and 12. To the extent this objection is not related to the sale of the company, NEMSA suspects this

objection relates to questions that were asked of Hudelson about the employees' status if the union did not prevail in the election.

During an informational meeting with Hudelson, an employee asked if they would be protected by the Union if the union lost the election. Hudelson advised employees that if they voted no union, they would remain "at will" in their employment and would have no protection from unilateral changes to their wages, benefits and working conditions. Some employees expressed concern that they would be targets for retaliation from the Employer for attempting to organize the workforce. At no time did Hudelson or any other NEMSA representative tell employees that in fact they would be terminated or otherwise retaliated against by AmbuServe. Instead, Hudelson candidly advised employees that some employers have unlawfully terminated or otherwise retaliated against employees who tried to unionize the workforce, even though such actions are prohibited by law. Hudelson merely explained that pre-textual terminations are sometimes easier for employers to accomplish in an "at will" environment. Hudelson did not threaten or coerce any employees into supporting the Union. The truthful and accurate information provided by Hudelson was readily available to employees through numerous other sources. Hudelson did not interfere in any way with the employees' free choice in the election.

RESPONSE TO OBJECTION NUMBER 11

This objection alleges that the Union and/or its agents had a group meeting within 24 hours prior to the election. Significantly, the objection does not allege that the Union and/or its agents met with any employees who were eligible to vote. The Union and its agents are free to meet as a group at any time. Assuming, however, that AmbuServe is actually accusing NEMSA and/or its agents of improperly conducting meetings with employees who were eligible to vote, NEMSA denies engaging in any prohibited activity during the critical period that adversely affected the election.

Campaign meetings with assembled groups of employees on company time are prohibited within 24 hours before the scheduled time for an election. *Peerless Plywood Co.*, 107 NLRB 427, 429 (1955). This rule, however, does not prohibit unions from meeting with employees off company premises during the 24-hour period "if employee attendance is voluntary and on the employees' own time." *Id.* at 430; see *Nebraska Consolidated Mills*, 165 NLRB 639 (1967).

Hudelson was asked to be available to AmbuServe employees on the night prior to the election in order to answer any last minute questions. Hudelson made herself available at a local Starbuck's coffee store. The meeting was not held on the employer's premises and attendance at the meeting was entirely voluntary. Only one employee attended the meeting.

The employee was an off duty dispatcher. Such a meeting does not violate the *Peerless Plywood* rule and did not adversely affect the election.

RESPONSE TO OBJECTION NUMBER 13

This objection falsely alleges that the Union purchased meals and other benefits for employees if they voted for the Union. Again, the Employer did not provide sufficient factual context to support the objection. The Union, however, denies that it ever provided meals or benefits to employees in exchange for their support or vote in the election.

On or about June 6, 2012, Hudelson made herself available to AmbuServe employees at a local Starbucks coffee store. Over a period of approximately four to five hours, Hudelson offered to purchase coffee, water or tea for any employees who desired a drink. Approximately five people asked for drinks, which Hudelson purchased for the people. On or about June 13, 2012, Hudelson also made herself available to AmbuServe employees at a local Starbucks coffee store. On that day Hudelson purchased a bottle of water for a member of the NEMSA organizing committee who attended the meeting. On or about June 19, 2012, Hudelson brought coffee to an AmbuServe crew that was parked near Starbucks but there was no discussion about the Union or the election. At no time during any of these employee contacts did Hudelson or any other the NEMSA representative purchase food or provide other benefits to AmbuServe employees as an inducement to vote for NEMSA. Employees were able to exercise their free will when voting and the conduct did not affect the results of the election.

WITNESSES

NEMSA encourages the Region to interview NEMSA representatives Shelly Hudelson (619) 240-5573 and Dary Sardad (916) 709-6270 concerning the Employer's objections and NEMSA's answer/response to those objections. NEMSA also invites the Region to interview AmbuServe employees Ermir Gashi, Matt Schaffer and Brian Fair about these matters. Shelly Hudelson can provide contact information for those employees.

If you have any questions about the campaign documents, NEMSA office manager Jason Herring (866) 544-7398 can provide information concerning the preparation and distribution of those documents.

CONCLUSION


AmbuServe's objections are without merit and should be summarily overruled. The Regional Director should administratively resolve the Employer's objections without a hearing. There are no substantial or material factual issues that need to be resolved. None of

the Employer's objections provide any basis for setting aside the election or otherwise conducting a new election.

Dated: 7/3/12

Respectfully submitted:

Talbot Law Group, A Professional Corporation



Timothy K. Talbot

ATTACHMENT “A”

The NEMSA Difference Is FIVE

5 Ways To Stand Together And Get Better Wages, Benefits, and Working Conditions At Ambuserve Ambulance

1. Vote For NEMSA!
2. Participate In Shop Steward Elections
3. Demand to be treated fairly using NEMSA as the megaphone. Let the supervisors at Ambuserve Ambulance know that you stand together and want industry standard wages, benefits, and working conditions at Ambuserve.
4. Support your Contract Bargaining Team
5. Vote on Your Contract and when it ratifies, let NEMSA enforce it!

5 Reasons To
Vote For
NEMSA



VOTE
NEMSA
June 22nd!

Stand
Together
Stand
Strong



NEMSA
National EMS Association

National EMS Association

4701 Sisk Rd, STE 104

Modesto, CA 95356

www.NEMSAUSA.org

Vote NEMSA On June 22nd!

The NEMSA Difference Is FIVE

\$5
Per
Hour
Difference

FIVE
Ways To
Stand
Together



5 Reasons To
Support
NEMSA

You are **FIVE**
TIMES More
Likely To Get
Higher Wages,
Better Benefits,
and Improved
Working
Conditions
With
NEMSA
Than If You
Were To
Remain Non-
Union.

5

Get Informed: The Difference That 5 Can Make

Five is a number that should mean a great deal to employees of Ambuserve. Everyday you work for an average \$5 per hour less than other EMTs who are doing the exact same work. The

Difference: NEMSA represents and has contracts with employers that guarantee industry standard wages. Get informed and discover the difference that FIVE can make for you!

YOUR Vote Is Needed – YOU Get To Choose



5 Reasons To Support NEMSA In The Upcoming Election

100% EMS... 100% For You!

FIVE simple reasons... One Conclusion: NEMSA Is Your Chance At Higher Wages and Better Working Conditions

1. Together as NEMSA you are protected. Management cannot make changes to wages, benefits, or working conditions unless you agree to the proposed change. If you don't agree, it doesn't happen.
2. As a NEMSA member, you are represented by the largest 100% EMS union in the USA. You get EMS experienced labor attorneys, staff, and representatives standing for your rights every day.
3. NEMSA contracts set and define industry standards that non-union employers cannot come close to achieving. Standards in wages, benefits, and working conditions are negotiated into every contract and every contract is aggressively and fairly enforced.
4. NEMSA represents over 6000 EMS Professionals Nationwide. Many of these EMS Providers make more money and have better benefits and working conditions than you do at Ambulance. No matter where you go, NEMSA is there standing up for employees rights and fair treatment.
5. NEMSA is YOU. NEMSA is run by the members, from the ground up. The word "union" starts with U

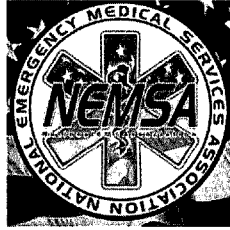


**Remember... Only You
Have The Power To Vote
For NEMSA!**

Three Reasons People Vote "No Union"

1. Fear: People fear what the boss will do if they vote for the union and the union doesn't win. People can be very afraid of their supervisor.
2. False Promises: The boss says vote "No Union" and issue X will change, get better, or be addressed. Seldom are things actually changed if you vote No Union. In fact, you lose your rights to have a revote for 1 Year.
3. Manipulation: Employers are good at promoting themselves and treating a union as if it destroys everything good and decent. Suddenly your employer truly cares about you. Amazing, isn't it?

YOUR Vote Is Needed – YOU Get To Choose



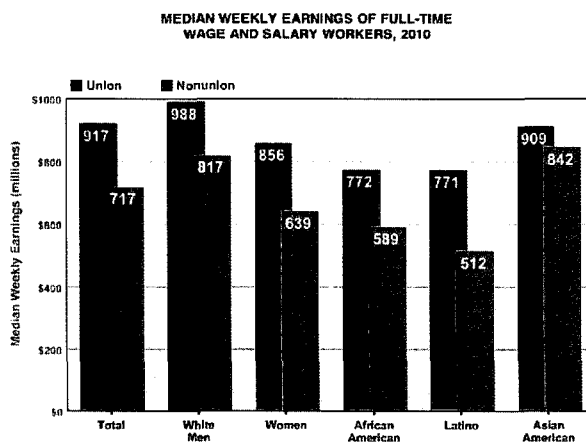
What Has Happened At Ambuserve Ambulance Since Employees Asked NEMSA To Be Their Union?

- CEO Tom Richards Fired
- 24 Hour Shifts Returned To Schedule
- Jason Johnson Brought Back To Work After Being Terminated
- Crews Are Now Beginning To Get Meal Periods (C-7)
- Direct Deposit Of Paychecks Is Beginning

And That Is BEFORE NEMSA Has Been Officially Named Your Labor Union. What Else Can NEMSA Do For You? Vote Yes To See!



Vote Union = Better Pay, Better Benefits



BLS, "Union Members in 2010", January 2011, table 2

Statistics prove it. The path to better pay and benefits is to join a union. The U.S. Department of Labor, Bureau of Labor Statistics has released its latest data showing the clear advantage to joining a union.

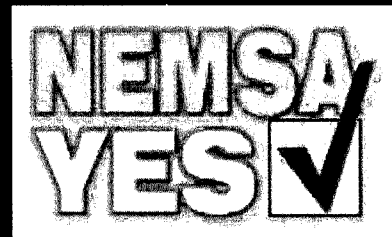
The Union Advantage:

- Union Members earn an average of 28% more than non-union employees in the U.S.A.
- Union Members are **4 Times** more likely to have affordable health benefits compared to non-union employees in the U.S.A.

ATTACHMENT “B”

Did You Know?

- Beyond Minimum Wage laws there are very few laws about what an employer is required to pay employees?
- There is NO law that an employer is required to provide health insurance for employees?
- There is NO law that an employer is required to pay vacation time, sick time, or paid time off?
- There is NO law that an employer must treat employees consistently, fairly, or with respect?



With a union and a contract your wages, benefits and working conditions are guaranteed! They cannot be changed unless YOU agree to change them!



4701 Sisk Rd, STE 102
Modesto, CA 95356

Important Information Inside!



Union Advantage by the Numbers

Union workers earn higher wages and get more benefits than workers who do not have a voice on the job with a union.

Union workers' median weekly earnings \$917
Nonunion workers' median weekly earnings \$717
Union wage advantage 28%

Union women's median weekly earnings \$856
Nonunion women's median weekly earnings \$639
Union wage advantage for women 34%

African American union workers' median weekly earnings \$772
African American nonunion workers' median weekly earnings \$589
Union wage advantage for African Americans 31%

Latino union workers' median weekly earnings \$771
Latino nonunion workers' median weekly earnings \$512
Union wage advantage for Latinos 51%

Asian American union workers' median weekly earnings \$909
Asian American nonunion workers' median weekly earnings \$842
Union wage advantage for Asian Americans 1%

Union workers covered by employer-provided health insurance 78%
Nonunion workers covered by employer-provided health insurance 50%
Union health insurance advantage 56%

Union workers without health insurance coverage 2.9%
Nonunion workers without health insurance coverage 14.2%
Nonunion workers are four times more likely to lack health insurance coverage

Union workers covered by guaranteed (defined-benefit) pensions 34%
Nonunion workers covered by guaranteed (defined-benefit) pensions 11%
Union pension advantage 209%

Union workers with short-term disability benefits 47%
Nonunion workers with short-term disability benefits 34%
Union short-term disability benefits advantage 38%

Sources: U.S. Department of Labor, Bureau of Labor Statistics, *Union Members-2010*, Jan. 21, 2011; U.S. Department of Labor, Bureau of Labor Statistics, *Employee Benefits in the United States, March 2010*, July 27, 2010; Employee Benefit Research Institute, *EBRI Notes*, October 2009.

Corporate Office
Central and Western States Office
4701 Sisk Rd, Suite 102
Modesto, CA 95356

Eastern States Office
225 Franklin Street
26th Floor
Boston, MA 02110

Connecticut Office
406 Farmington Ave
Farmington, CT 06032

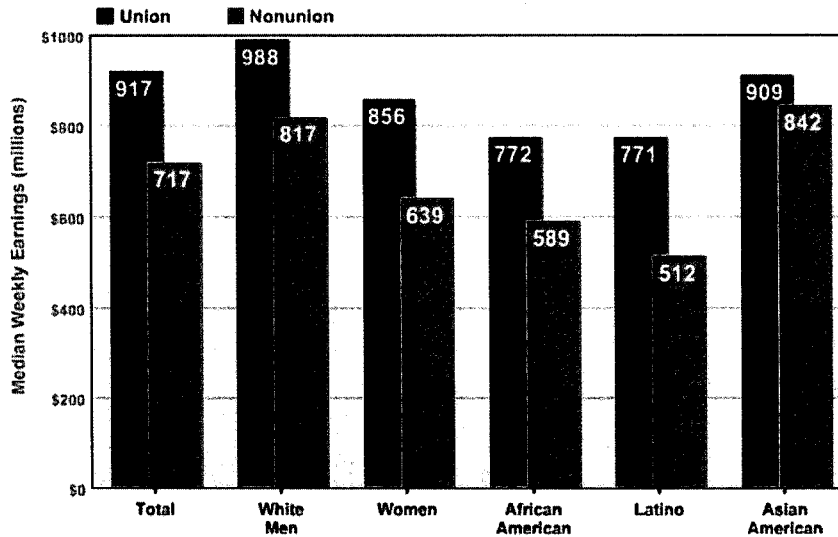
Toll Free: 866-544-7398

www.NEMSAUSA.org

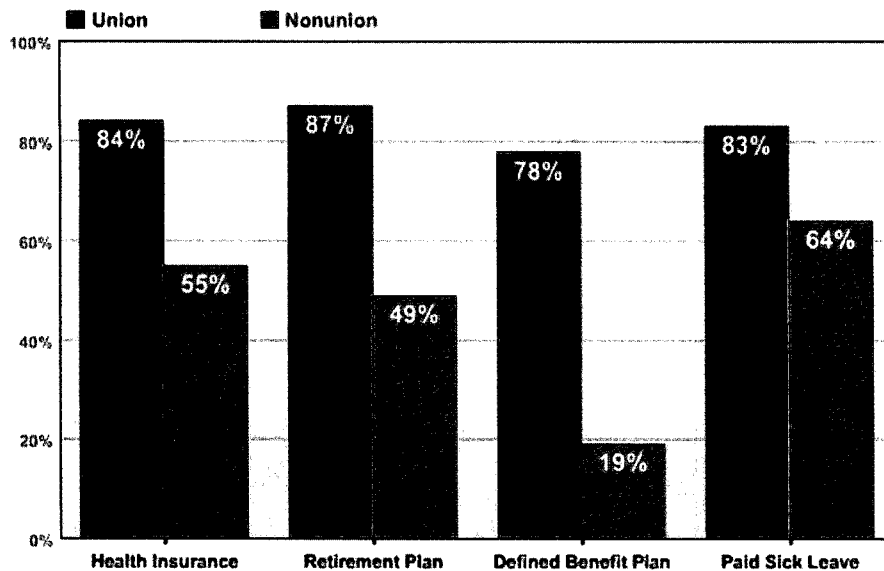
Fax: 209-572-4721

What Does The U.S. Government Say About The Benefits Of Joining A Labor Union?

MEDIAN WEEKLY EARNINGS OF FULL-TIME
WAGE AND SALARY WORKERS, 2010



BLS, "Union Members in 2010", January 2011, table 2



Source: BLS, Employee Benefits Survey, Table 2 and Table 9; March 2010

Joining NEMSA Just Makes Sense!

A Quick Study of How Unions Help Workers Win a Voice on the Job

What is a union?

A union is a group of workers who form an organization to gain:

- Respect on the job,
- Better wages and benefits,
- More flexibility for work and family needs,
- A counterbalance to the unchecked power of employers, and
- A voice in improving the quality of their products and services.

How do people form a union?

When workers decide they want to come together to improve their jobs, they work with a union to help them form their own local chapter. Once a majority of workers shows they want a union, sometimes employers honor the workers' choice. Often, the workers must ask the government to hold an election. If the workers win they form a union local, they use labor professionals to negotiate a contract with the employer that spells out each party's rights and responsibilities in the workplace.

Does the law protect workers joining unions?

Under the law, employers are not allowed to discriminate against or fire workers for choosing to join a union. For example, it's illegal for employers to threaten to shut down their businesses or to fire employees or take away benefits if workers form a union. Employers who violate these laws are reported by NEMSA to the Federal Government.

How do unions help working families today?

Through unions, workers win better wages, benefits and a voice on the job—and good union jobs mean stronger communities. Union workers earn 30 percent more than nonunion workers and are more likely to receive health care and pension benefits than those without a union. In 2007, nationwide average weekly earnings for union workers were \$863, compared with \$663 for their nonunion counterparts.

What have unions accomplished for all workers?

Unions have made life better for all working Americans by helping to pass laws ending child labor, establishing the eight-hour day, protecting workers' safety and health and helping create Social Security, unemployment insurance and the minimum wage, for example. Unions are continuing the fight today to improve life for all working families in America.

What challenges do workers face today when they want to form unions?

Today, thousands of workers want to join unions. The wisest employers understand that when workers form unions, their companies also benefit. But most employers fight workers' efforts to come together by intimidating, harassing and threatening them.

What Arguments Do Employers Use To Try And Convince Workers To NOT Join A Union?

Employers tend to hire expensive anti-union labor consultants who use a variety of methods to convince workers not to join unions. These methods commonly include the firing or re-assignment of managers or supervisors not liked or respected by the workforce, illegal private closed door one to one meetings, illegal mandatory meetings, the immediate improvement of working conditions while claiming that they "didn't realize the problem was so bad" and illegal promises to correct problems if the employee just gives the boss "one more chance", threats of doom and gloom, illegal threats of taking away current wages, benefits, and working conditions. Employers will commonly claim that unions are unneeded third parties between employee and manager. Employers will claim unions are only interested in union dues and union security clauses in contracts and not in actually representing workers.

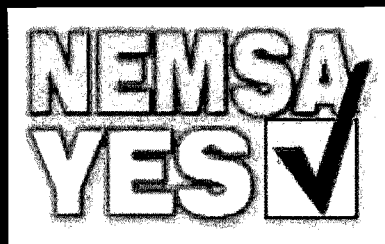
ATTACHMENT “C”

Election Date: Friday June 22, 2012

Voting Time and Location

Ambuserve Main Station

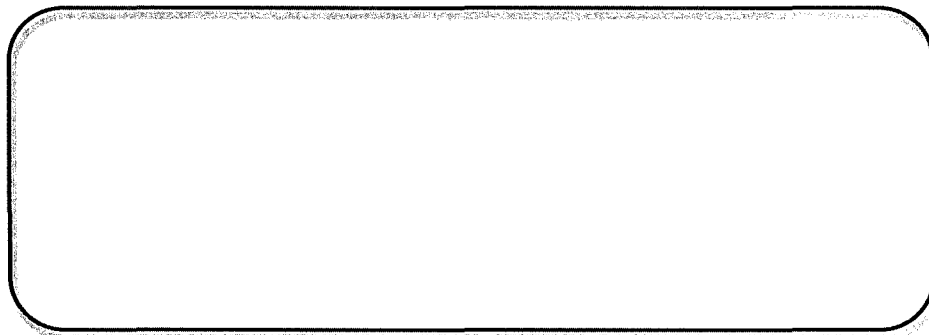
1100 hrs to 1600 hrs



Don't Forget To Vote!



National Headquarters
4701 Sisk Road, Suite 102
Modesto, CA 95356



Don't Forget To Vote On June 22nd!

NEMSA News

A Publication For Ambuserve EMS Professionals

NEMSA Is 100% EMS... 100% For You...

EMS Professionals fed up with employers who care only about the bottom line and the profit margin and with ineffective labor unions formed NEMSA to give EMS workers a voice. That voice is now more than 6000 members strong and is re-shaping the EMS landscape. Find out how inside...



NEMSA: A Union With A Record Of Results

The National EMS Association (NEMSA) is a different kind of labor union. Registered as a labor union and also as a not-for-profit organization, NEMSA provides aggressive and fair representation to the people it represents. NEMSA is made up of EMS Professionals throughout the USA who all share the same goals: to better their own lives and the lives of other EMS Professionals.

Members of your workforce who were tired of the poor treatment and low wages at Ambuserve contacted NEMSA. Your workforce overwhelmingly signed interest cards and an election is scheduled on June 22nd to elect NEMSA your bargaining unit representative.

A vote for NEMSA is a vote to give yourself a voice in your own workplace! NEMSA is 100% EMS and run by EMS Professionals. We understand EMS and understand how to negotiate with Ambuserve. NEMSA offers superior union representation and superior contracts. Our record shows it. NEMSA members are among the highest paid and best -benefitted EMS Professionals in the USA!

Now it is time for EMS Professionals at Ambuserve to vote. Vote for NEMSA and join EMS Professionals from around the USA in bettering lives and lifting our profession!

What Is NEMSA?

NEMSA is a professional association that provides union representation to EMS Providers around the USA. 6000 members strong and growing, NEMSA Is The ONLY 100% EMS Union In The United States!

An overwhelming majority of your workforce has petitioned for NEMSA to represent your workforce.

**NEMSA Has The BEST EMS Contracts In The USA!
Industry Experts Find NEMSA Members To Be Higher
Paid and Better Benefitted Than Non Union Employees!**

The Truth About Union Dues:

NEMSA Spends 98% Of Union Dues On Representing EMS Workers!

Union Dues are a touchy subject. Nobody likes paying money and not getting something of value in return. Far too long labor unions other have taken dues from hardworking members and wasted them on political activities, bloated infrastructures, and wasteful spending.

NEMSA Is Different. As a Not-For-Profit Mutual Benefit Corporation NEMSA must follow strict laws related to how we spend hardworking members union dues. We are audited yearly and average 98% of member's dues money being returned to them in the form of superior union representation.

Two levels of accountability make sure that member's dues money is spent carefully and wisely. Not-For-Profit laws prohibit spending that does not directly benefit the members. And on top of that, written into the NEMSA Constitution and Bylaws is an extra requirement for an annual audit of all finances reported directly to the NEMSA Board of Directors.

Dues are necessary for the functioning of any union. However because of NEMSA structure, NEMSA can keep dues low, averaging about \$30 per month. That is significantly less than a gym membership or cellular telephone plan.

NEMSA Will Hit The Ground Running!

After Ambuserve EMS Professionals Vote NEMSA, NEMSA will hit the ground running!

NEMSA Attorneys will immediately begin preparing for contract negotiations by requesting bargaining dates with Ambuserve and filing appropriate notices with the federal government.

Shop Steward Nominations and contract surveys will be mailed to each Ambuserve employee.

NEMSA will also meet with Ambuserve management as often as necessary to provide superior representation of Ambuserve EMS Professionals



Karissa Moreland is a NEMSA Shop Steward in San Leandro California.

Become Part of.... Us... You and I... We...

Join the NEMSA family today!
We're growing and we need you!

Call today!

Karissa Moreland

What Does **NEMSA** Representation Mean?

Superior Contracts AND Superior Representation

NEMSA AMR San Mateo CA

- 28% pay increase over 4 years.
- Top Step at **\$108,000** per year.

NEMSA AMR Northern California CA

- 28-36% Raise over 3 years,
- Forced AMR to offer a second health plan other than AMR national plan
- \$1000 FSA debit card to offset healthcare costs.

NEMSA AMR N. Hollywood CA

- Took arbitration case SEIU “botched” and won massive back pay award for current and former employees.
- 20-25% pay increase over 3 years.

NEMSA AMR Riverside CA

- 12-18% Pay Increase Over Three Years With Less Expensive Health Insurance

NEMSA AMR San Diego CA

- 13-25% Pay Increase over 3 years
- \$3250 signing bonus
- 10% 401k Match \$1/\$1

**NEMSA DOESN'T HAVE A “SECRET FORMULA” FOR SUCCESS.
NEMSA KNOWS EMS BECAUSE NEMSA IS 100% EMS.
NEMSA HAS SUPERIOR REPRESENTATION AND THE BEST
CONTRACTS IN THE USA BECAUSE WE UNDERSTAND EMS.**

ATTACHMENT “D”

Begin forwarded message:

From: Matt Schafer <mschafer89@yahoo.com>
Date: June 28, 2012 11:49:43 PM PDT
To: Shelly Hudelson <shellyhudelson@nemsausa.org>
Subject: Fwd:

Shelly, the letter I sent to Melissa, per your request.

Begin forwarded message:

From: Matt Schafer <mschafer89@yahoo.com>
Date: June 22, 2012 6:45:50 PM PDT
To: "melissah@ambuserve.net" <melissah@ambuserve.net>
Reply-To: Matt Schafer <mschafer89@yahoo.com>

Melissa,

On the evening of Wednesday, June 20, I heard that NEMSA had spoken with a broker regarding Ambuserve for sale. It was made known to me that representatives from NEMSA had located a website on which an unspecified ambulance company was for sale, and the broker's name and phone number were listed as well. On the following morning, June 21, I phoned the number listed on the website and began a conversation with Leo Keligian, the broker with which NEMSA had spoken to the night before. I asked Mr. Keligian if the company listed on the website was Ambuserve, to which he responded yes it was. He then told me that the company had been bought for approximately five million dollars with an additional two million dollars being included for the purchase of the property. He also told me the company was in escrow and the deal should be closing within two weeks as they were simply waiting on a PnL report. I had heard from my coworkers that the NEMSA representatives had claimed to be interested in buying the company to obtain this same information, though I cannot attest to this as I did not hear them say this directly. It should be known that Mr. Keligian offered the information to me without me even having to identify myself. Anyhow, I hope this is helpful.

Matt

Matthew A. Schafer
mschafer89@yahoo.com
(510)517-0659

ATTACHMENT “E”

Union Dues Are Low! Far Less Than The Average Cell Phone Plan or Gym Membership

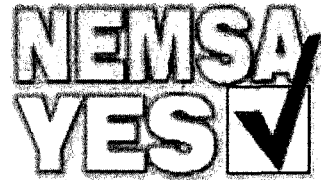
The Truth About Union Dues

NEMSA Dues Are Low And Go Directly To Representing YOU!

Union dues and fees are a topic employers like to focus on because they appear scary. NEMSA prefers to address the issue directly. You deserve the truth, not the spin.

Dues are necessary to effectively run NEMSA. Every staff member and labor attorney is paid for with dues paid by hardworking members of NEMSA. Every benefit gained in contracts, every hourly wage won in negotiations, every problem solved in your workplace by NEMSA is because of the dues paid by members.

NEMSA is a not-for-profit labor union. **Per annual auditing, 98% of dues money is spent directly on representing members.** **Dues average \$36 per month**(usually by payroll deduction) and **NO INITIATION FEES are charged to any current employee.** Only **AFTER** a contract is voted in by your workforce, do **newly hired employees** get charged a \$100 initiation fee, payable in eight \$12.50 installments.



National EMS Association

4701 Sisk Rd, Suite 104
Modesto, CA 95356

Straight Talk About Unions



AmbuServe Employees Are Being Bombarded With Information

Here Is The Straight Talk, Without The Campaign Spin

The campaign is in full swing. NEMSA asks you to vote YES. AmbuServe demands you vote NO UNION. Information is everywhere.

Because there is so much information out there, NEMSA wants to give you the simple truth ... just the truth without the campaign

spin. And while normally we would ask for your vote in the upcoming election, instead we just ask that you read the information in this flyer and come to your own conclusion. We believe that once you look at everything, you will join 6000 other EMS Professionals and say YES to NEMSA.

Changing "At Will" Employment

With NEMSA, you can no longer be fired or disciplined "just because."

Page 2

Union Contracts

Why is a union contract important? They Guarantee your wages, working conditions, and benefits.

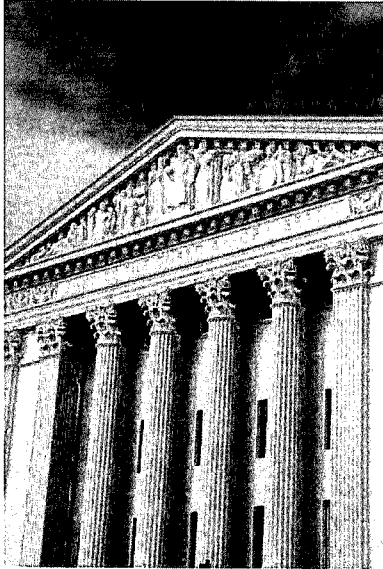
Page 3

Union Dues

Dues are low, no initiation fees for current AmbuServe Employees...

Page 4

BEING UNION MEANS NO MORE "AT WILL" EMPLOYMENT



LAW

Did You Know...

- * Federal Law protects your right to join a union. The only thing is that your workforce must decide this based on majority vote.
- * Federal Law prohibits your employer from influencing, coercing, or intimidating you to vote for or against a union? Employers are free to make their case but are violating the law when they try to scare you, intimidate you, influence you, or threaten you.

At-will employment is a doctrine of American law that defines an employment relationship in which either party can break the relationship with no liability. **Under this legal doctrine, any hiring is presumed to be "at will"; that is, the employer is free to fire individuals "for good cause, or bad cause, or no cause at all" and the employee is equally free to work at-will or cease work and be fired.**

Work "At Will" And You Are At The Will Of Your Employer.

Being Union Changes At Will Employment.

Instead with a union and a contract you can only be fired for "Just Cause" reasons. This means that your employer must be fair and even handed, and can only discipline or fire you if they have a legal reason to do so.

Unions create fairness at work by assuring that "Just Cause" replaces "just because" in your job. Your employer can not discipline or fire you "just because" any longer.

Who Is The Union? Just Look In The Mirror And Then At Your Coworkers

Employers would have you believe that a union is a corrupt organization that takes dues money and pads it's pockets in some distant office.

They couldn't be more wrong. **The Union is YOU and YOUR Coworkers.** The union is everyone you work with, collectively standing together for safety, strength, and power.

Federal Law gives

employees rights when organized as a union that you otherwise would not have.

Laws protect you and require your employer to negotiate with you regarding your wages, benefits, and working conditions.

The union is **YOU**. NEMSA provides the megaphone but it is **YOUR** voice. **It's about YOU!**



Why A Union Contract Is Important

A Solid Foundation And A Set Of Rules To Govern Both Union and Employer

A union contract is a legal contract between a union and employer that controls all wages, benefits, and working conditions. It is legally enforceable by law and provides a stable foundation for both the employer and union.

Union contracts are negotiated with employers all around the USA. **In fact, more than 99% of all union contracts are negotiated peacefully without a strike or other workplace actions.**

The key to negotiating a good contract for union members is to get union members involved in the negotiating process. A union like NEMSA provides professional labor attorneys, labor representatives, and staff however it is the input of everyday EMTs and

Paramedics that make good contracts.

"Local input is everything in contracts" stated NEMSA Executive Director Torren Colcord. "We have found that the input of the EMTs and Paramedics who work everyday is the single greatest factor for success."

Once negotiated, a contract must be voted in by majority vote. NEMSA bylaws prohibit anyone accepting a contract for you. You get the final say.

"The next step is to enforce the contract. Employers try to wiggle out of contracts all the time. We enforce our contracts aggressively but fairly, so that employers are held to the contract standards they agreed to" States Dary Sardad, NEMSA Labor Relations Representative.